

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Ertel Manufacturing Corporation  
2045 Dr. Andrew J. Brown Ave.  
Indianapolis, IN

Proceeding under  
Indiana Code Title 13

**AGREED ORDER**

The Indiana Department of Environmental Management ("IDEM"), by its Commissioner, the Indiana Finance Authority ("IFA"), the City of Indianapolis (the "City"), and Ertel Manufacturing Corporation ("Ertel," a term more fully defined below) (collectively the City and Ertel will sometimes be referred to herein as "Respondents") desire to settle and compromise this matter without hearing or adjudication of any issue of fact and law, and consent to the entry of this Administrative Agreed Order ("Agreed Order"). In addition, Respondents and Hartford (a term more fully defined below) shall receive a complete release, contribution protection and finality for all past, current and future remedial or removal actions at or in connection with the Site without hearing or adjudication of any issue of fact and law, based upon, among other things, the Hartford Entities (a term more fully defined below) agreement to fund Ertel's payments under this Agreed Order as well as payments to be made consistent with the terms of a separate Settlement And Release Agreement entered into between IDEM, the City, the Ertel Signatories (as that term is defined below) and the Hartford Entities.

**I. JURISDICTION**

1. As set forth below, this Agreed Order is entered into by IDEM, the Hartford Entities, IFA the City and the Ertel Signatories and provides for certain payments to be made by the Hartford Entities on behalf of Respondent Ertel to the City to reimburse past costs, and to dedicated escrow accounts to reimburse IDEM's past costs, and for IDEM's use in performing future Response Actions at or in connection with the releases of Hazardous Substances and Petroleum at or from the property located at 2045 Dr. Andrew J. Brown Avenue in Indianapolis and/or from Ertel's former operations at or around that Site.

2. IDEM is the agency with the duty and authority to administer and enforce the provisions of Indiana Code ("IC") IC 13-25-4, conduct Response Actions, and is authorized to recover response costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and the Indiana Hazardous Substances Response Trust Fund Law, IC 13-25-4. IDEM represents that it has the authority to enter into this Agreed Order and conduct the activities referenced in this Agreed Order.

3. IDEM has authority under IC 13-25-4-23 to enter into an agreement that calls for one or more parties to pay for Response Actions concerning the releases of Hazardous Substances. IDEM has the authority under CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2) to enter into an administrative settlement that resolves a party's liability, if any, arising under CERCLA.

4. IDEM also has authority under IC 13-24-1-1 to enter into an agreement that calls for one or more responsible parties to pay for Response Actions concerning the release of Petroleum.

5. IDEM has determined that, pursuant to IC 13-24-1-1 and IC 13-25-4-23, this Agreed Order is in the public interest and that Ertel will contribute to the Response Action as set forth in this Agreed Order.

6. IDEM, the Hartford Entities, the City and the Ertel Signatories recognize that this Agreed Order has been negotiated in good faith and that the actions undertaken by the Hartford Entities, the City and the Ertel Signatories in accordance with this Agreed Order do not constitute an admission of any liability. Although the Hartford Entities, the City and the Ertel Signatories agree to comply with and be bound by the terms of this Agreed Order, the Hartford Entities and Respondents do not admit, and retain the right to controvert in any subsequent proceedings (except in any subsequent proceedings commenced by IDEM against Respondents and/or Hartford to enforce the terms of this Agreed Order): (A) the findings of fact; and (B) the conclusions of law contained in this Agreed Order.

7. For the purposes of enforcing this Agreed Order, the City, the Ertel Signatories and the Hartford Entities waive any defense to liability for the matters covered in this Agreed Order based on any failure by IDEM to issue a Special Notice Letter, Notice of Violation, or other such notice.

## **II. PARTIES BOUND**

8. This Agreed Order applies to and is binding upon the Hartford Entities, each Respondent, its agents, successors, assignees, officers, directors, and principals and upon IDEM and IFA and any successor departments or agencies of the State. The signatories to this Agreed Order certify that they are fully authorized to execute and legally bind the Parties he/she represents. No change in corporate status of Respondents, or the ownership of Respondents or the Property, shall alter Respondents' rights or responsibilities under this Agreed Order.

## **III. DEFINITIONS**

9. Unless otherwise expressly provided herein, terms used in this Agreed Order which are defined in IC 13-11-2 or CERCLA § 101, 42 U.S.C. § 9601, or regulations promulgated thereunder, shall have the same meaning assigned to them in Indiana Code or CERCLA or in such regulations. Whenever terms listed below are used in this Agreed Order or in any Exhibit hereto, the following definitions shall apply:

10. "Agreed Order" means this Agreed Order and all appendices attached hereto. In the event of a conflict between this Agreed Order and any Exhibit, this Agreed Order shall control.

11. "Business day" shall exclude Saturdays, Sundays and federal and state holidays. In computing any period of time under this Agreed Order, where the last day would fall on a Saturday, Sunday or federal or state holiday, the period shall run until the close of business of the next business day.

12. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, et seq.

13. "Claims" or "Claim" means any and all past, present, or future, known or unknown, fixed or contingent, matured or unmatured, liquidated or unliquidated, claims, causes of actions, cross-claims, liabilities, rights, demands (including letter-demands, notices, or inquiries from any person or government agency), penalties, assessments, damages, requests, suits, lawsuits, costs (including attorneys' fees and expenses), interest of any kind, actions, administrative proceedings, criminal proceedings, or orders, of whatever nature, character, type, or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract, or any statutory, regulatory or common law claim or remedy of any type including, without limitation, any "Claim" as that term is defined in the United States Bankruptcy Code, 11 U.S.C. § 101(5) and "demand" as defined under 11 U.S.C. § 524(g)(5).

14. "Commissioner" means the Commissioner of IDEM. The term shall include any person properly designated by the Commissioner.

15. "Contamination" or "Contaminants" are defined as per Ind. Code 13-11-2-42 and 43, and include, without limitation, any hazardous substances, petroleum, or pollutants present in the environment (including, without limitation, soil, soil vapor, groundwater, atmosphere or air) on or prior to the date upon which this Order is fully executed by IDEM, IFA, the City, the Ertel Signatories and the Hartford Entities, and the migration, seepage, discharge, dispersal, escape, spread and/or infiltration of any such hazardous substances, petroleum, or pollutants after the date upon which this Order is fully executed.

16. "Dynagear" means Dynagear, Inc., Global Gear, Inc., Dynagear Oil Pumps, Inc., Manley Badger, Inc., Dynagear Holding, Inc. or Nylen Products, Inc. and each of their past, present, and future directors, officers, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, subsidiaries, divisions, joint venturers, predecessors, successors, beneficiaries, and assigns.

17. "Effective Date" shall mean three (3) Business days after the date the Agreed Order is signed by the Commissioner.

18. "Environmental Restrictive Covenant" or "ERC" shall have the meaning set forth in IC 13-11-2-193.5 for restrictive covenant.

19. "Ertel" means Ertel Manufacturing Corporation f/k/a Ertel Machine Company and, as it relates to this Site, its past, present, and future directors, officers, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations (including, but not limited to, "Dynagear"), subsidiaries, divisions, joint venturers, predecessors, successors, beneficiaries and assigns. "Ertel" includes, without limitation, the Ertel Signatories.

20. "Ertel Signatories" means Ertel Manufacturing Corporation, and its past, present and future employees, agents, representatives, parent, subsidiary and affiliated corporations, joint venturers, partnerships, predecessors, successors, and assigns.

21. "Escrow Accounts" means the two separate dedicated accounts with the Bank of New York created by the Indiana Finance Authority for IDEM to be funded in the following amounts: (1) \$140,000 to reimburse IDEM past costs ("Escrow Account 1"), and (2) \$860,000 for IDEM to conduct future Response Actions at or in connection with the Site ("Escrow Account 2").

22. "Hartford" means the companies comprising The Hartford Financial Services Group, Inc., individually and collectively, including, but not limited to, the Hartford Entities and each of their respective past, present, and future directors, officers, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, subsidiaries, divisions, joint ventures, predecessors, successors, beneficiaries, and assigns. It is expressly understood that Hartford is not a Respondent and is only identified herein because the Hartford Entities are making payments on behalf of Respondent Ertel that entitle Hartford to receive a release, a covenant not to sue and contribution protection.

23. "Hartford Entities" means Hartford Fire Insurance Company and Hartford Insurance Company of the Midwest.

24. "Hazardous Substance" or "Hazardous Substances" shall have the meaning set forth in 42 U.S.C. § 9601(14) and includes any substance the Solid Waste Management Board determines to be hazardous under environmental management laws.

25. "IDEM" or the "Department" means the Indiana Department of Environmental Management and any successor department(s) or agencies of the State.

26. "IFA" means the Indiana Finance Authority and any successor department(s) or agencies of the State.

27. "No Further Action Letter" or "NFA Letter" means, as per 329 IAC 7.1-2-9, the form of letter sent by IDEM confirming that the Response Actions at or in connection with the Site have been completed and that, as to the Contamination, no further action is required from either the Respondents (other than compliance with any environmental restrictive covenant).

28. "Parties" means IDEM, the Hartford Entities, the City and the Ertel Signatories.

29. "Person" means and includes a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or partnership, joint venture, trust or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity.

30. "Petroleum" has the meaning set forth in Ind. Code 13-11-2-160 and includes any fraction thereof.

31. "Response Action" has the meaning set forth for "Response" in Ind. Code 13-11-2-189.

32. "Remedial Action" has the meaning set forth in Ind. Code 13-11-2-185.

33. "Removal Action" has the meaning set forth for "Removal" in Ind. Code 13-11-2-187.

34. "Site" or "Property" shall mean the three parcels of property formerly owned by Ertel Manufacturing Corporation and located at 2045 Dr. Andrew J. Brown Avenue, Indianapolis and any other nearby parcels of property which Ertel owned, operated or controlled at any point in time.

#### **IV. STATEMENT OF PURPOSE**

35. By entering into this Order, the mutual objectives of IDEM, IFA, the Hartford Entities, the City and the Ertel Signatories are: (a) to protect public health and welfare and the environment at and around the Site; (b) for Ertel and/or the Hartford Entities on Ertel's behalf to make a cash payment to resolve all past, present or future Claims or liabilities of any kind related to the Site regarding releases of Contamination, whether known or unknown, alleged to have occurred at or emanate from the Site; (c) to provide a complete release, covenant not to sue, contribution protection and finality to Respondents and Hartford for all past, current and future remedial or removal actions at or in connection with the Site regarding Contamination, whether known or unknown, alleged to have occurred at or emanate from the Site; and (d) to provide funds to allow IDEM and the City to recover a portion of past costs in connection with remedial activities at the Site, and for IDEM to conduct and complete future Response Actions at or in connection with the Site and close the Site, including any off-Site areas of Contamination, as set forth herein.

#### **V. FINDINGS OF FACT**

Based on the information available as of the Effective Date of this Agreed Order, the Commissioner makes the following findings of fact ("Findings of Fact"):

36. Ertel maintained manufacturing facilities at and near 2045 Martindale Ave, now known as 2045 Dr. Andrew J. Brown Avenue, in Indianapolis. Ertel manufactured and/or machined certain automotive parts, and operated a foundry and mold machines. Over time, the Ertel property became contaminated with metals, PCBs, chlorinated solvents, Petroleum and other Contamination.

37. In 1998, Ertel's ownership changed when the company's stock was sold to Dynagear. For that reason, Dynagear is an intended beneficiary of this Agreed Order and shall have no further liability with respect to the Site whether for past or future costs.

38. While investigating the National Lead Site in 2004, the Department noted that the nearby Site was abandoned. In 2005, the United States Environmental Protection Agency ("U.S. EPA"), the State of Indiana, and the City began investigating the Site.

39. Upon investigation of the Site with EPA, the Department discovered Hazardous Substances had been released at the Site. The EPA removed several potential sources of Hazardous Substances for lawful disposal, including:

- Many drums of hazardous wastes and some containers labeled "TCE" on the east and west sides of the building (removed for lawful disposal);
- Quench and plating vats (decontaminated and wastes removed);
- A degreaser and oil/water separator full of sludge (decontaminated and wastes removed);
- Transformers containing PCB oils and a basement contaminated with PCB oils (oil, soil and water removed);
- Baghouses (decontaminated and wastes removed); and
- Above ground storage tanks with waste oils (decontaminated and wastes removed).

40. While EPA funded much of its initial removal, IDEM and the City performed the subsequent subsurface investigation.

41. From 2004 through 2008, the Department incurred \$138,742.25 in environmental response costs to remove Hazardous Substances and investigate the subsurface Contamination at the Site. From 2008 to date, the Department incurred response costs in support of the Indiana Finance Authority's oversight of the Site. In addition, the Department incurred enforcement costs in 2010 and 2011 in bringing suit against Ertel.

42. In 2007, the City acquired the abandoned Site. The City employed the services of various environmental consultants and requested assistance from the Indiana Finance Authority's Brownfields Program. Governmental oversight of the Site was transferred from the IDEM State Cleanup Program into the Indiana Finance Authority's Brownfields Program, and then back to the State Cleanup Program. IDEM represents that it has the statutory authority to enter into this Agreed Order.

43. The IFA does not have cost recovery or other Claims against the City, Ertel or Hartford.

44. The City performed various environmental assessments, removed and excavated soils, demolished certain structures, conducted groundwater monitoring, and conducted vapor intrusion monitoring at and around the Site. Including interest, attorneys' fees and legal costs, the City incurred over \$5.8 million in cleanup costs for its activities.

45. The Department estimates that the cost to bring the Site and any associated off-Site Contamination to No Further Action status is \$860,000.

46. No federal grant requires an enforcement action at the Site.

## **VI. CONCLUSIONS OF LAW**

Based on the Findings of Fact set forth above and other information available upon execution of this Agreed Order, IDEM has determined that:

47. The Site is a "facility" as defined by CERCLA § 101(9), 42 U.S.C. § 9601(9), and for the purposes of IC 13-25-4.

48. The Contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances," as defined by CERCLA § 101(14), 42 U.S.C. § 9601(14), and IC 13-11-2-98, and "petroleum", as defined in IC 13-11-2-160.

49. Respondent Ertel, as a former owner and operator of the Property, is a party responsible under CERCLA § 107(a), 42 U.S.C. § 9607(a), and IC 13-25-4-8. IC 13-25-4-8 provides that a person who is liable under CERCLA § 107(a), 42 U.S.C. § 9607(a), for the costs of a removal or remedial action incurred by IDEM consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300, is liable to IDEM in the same manner and to the extent as that person is liable under CERCLA.

50. Respondent Ertel is an owner and/or operator under IC 13-11-2-151 and therefore alleged to be liable for the Petroleum releases pursuant IC 13-24.

51. The presence of Hazardous Substances and Petroleum at the Site or the past, present or potential migration of Hazardous Substances and Petroleum currently located at or emanating from the Property, constitute an actual and/or threatened "release" as defined in IC 13-11-2-184 and CERCLA § 101(22), 42 U.S.C. § 9601(22).

52. IDEM has incurred, and will continue to incur, costs due to the undertaking and oversight of Response Actions at the Site as defined by IC 13-11-2-189 and CERCLA § 101(25), 42 U.S.C. § 9601(25).

## **VII. COMMITMENTS TO SITE CLEANUP**

### **PAYMENT BY THE HARTFORD ENTITIES ON BEHALF OF ERTEL**

53. The Hartford Entities will pay \$1,000,000 on behalf of Ertel to the Escrow Accounts for IDEM's and IFA's use, as outlined herein. The check shall be made payable to the "Indiana Finance Authority" and sent to the Deputy Attorney General. The Hartford Entities will also pay \$4,000,000 on behalf of Ertel to the City for the City's past costs in the form of a check made payable to "The City of Indianapolis and Ice Miller LLP." The \$1,000,000 paid to IDEM is allocated \$140,000 to IDEM past costs (Escrow Account 1), and \$860,000 to complete IDEM's future Response Actions at or in connection with the Site (Escrow Account 2). The Parties expressly acknowledge that the payments described above are for the implementation and/or completion of an approved Response Action within the meaning of IC 13-25-4-27(b).

### **THE INDIANA FINANCE AUTHORITY'S COMMITMENT TO SITE CLEANUP**

54. IFA agrees to create and manage the Escrow Accounts and oversee the disbursement of the funds in the Escrow Accounts according to the instructions of IDEM. The Parties agree that the Escrow Accounts are for the benefit of IDEM and the City. IFA acknowledges that it does not have any cost recovery or other Claims against Ertel or Hartford or in connection with the Site and waives any such Claims to the extent such Claims exist.

## **THE CITY OF INDIANAPOLIS' COMMITMENT TO SITE CLEANUP**

55. The City agrees that IDEM may obtain reimbursement from the Escrow Accounts for all response costs incurred by IDEM during the implementation of its Response Actions at or in connection with the Site. On a periodic basis, IDEM will send an invoice requiring payment from Escrow Account 2 that includes a cost summary, including direct and indirect costs incurred by IDEM and its contractors. IDEM administrative costs for salary, benefits and indirect costs of the IDEM personnel shall be calculated at a rate of \$69.11 per hour or fractional rate thereof. IDEM reserves the right to increase the hourly rate for administrative costs under this Agreed Order in accordance with the Consumer Price Index, per calendar year (effective every February 1<sup>st</sup>), Midwest Region Urban Zone.

56. The City shall, commencing on the Effective Date, provide IDEM and its representatives, including contractors, with access at all reasonable times to the Property, for the purpose of conducting any Response Action including, but not limited to, the following activities:

- a. verifying any data or information submitted to IDEM;
- b. conducting investigations relating to Contamination at or near the Site;
- c. obtaining soil or groundwater samples;
- d. assessing the need for, planning, or implementing additional Response Actions at or near the Site; and
- e. determining whether the Property or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Agreed Order.

Upon IDEM's request, and no later than sixty (60) days after the No Further Action Letter, the City shall execute and record in the Recorder's Office of Marion County, State of Indiana, an Environmental Restrictive Covenant ("ERC"), running with the land.

## **IDEM'S COMMITMENTS TO SITE CLEANUP**

57. IDEM will use the funds placed in the Escrow Account 2 to provide project management for implementation and completion of the ground water remedy at or in connection with the Site. IDEM's project management includes but is not limited to the following:

- a. IDEM will assign Project Manager Ryan Groves to the Site;
- b. The remedial goals will be: (1) reducing the on-site Contaminants of concern to industrial default RISC cleanup levels; and (2) reducing Contaminants of concern flowing off-site in the groundwater to at or below MCLs or to a site specific risk level, as defined by IDEM RISC guidance, to be protective of human health and the environment and of the City's water supply;



- c. IDEM will have sole authority to present invoices to Escrow Account 2 for payment from Escrow Account 2 in connection with the Site; and
- d. When the remedial goals have been met, IDEM will issue a No Further Action Letter to Respondents.

58. IDEM and IFA will not use Escrow Account 2 funds for any purpose other than for Response Actions at or in connection with the Site. IDEM estimates that the above can be accomplished for \$860,000 and will bring the Site conditions and any associated off-Site areas to NFA status, a letter for which will be issued in both Respondents' names. If any funds remain unspent after IDEM has issued an NFA letter, the funds in Escrow Account 2 will be surrendered by IDEM and IFA to the City, as requested. IDEM and IFA do not commit to spending funds other than in Escrow Account 2, but IDEM and IFA agree that Respondents and Hartford are not liable for additional funding to close the Site or any associated off-Site Contamination. Thus, Respondents and Hartford shall have no further responsibility for the Site including, but not limited to off-Site Contamination and closing the Site, regardless of whether the payment to Escrow Account 2 ultimately proves sufficient to close the Site.

59. Upon payment of the amounts set forth in paragraph 53 of this Agreed Order, neither Ertel nor Hartford shall have any obligation to IDEM, IFA or the City concerning the Site or any associated off-Site Contamination, regardless of whether the payment to the Escrow Accounts ultimately proves sufficient to close the Site.

#### **JOINT COMMITMENTS TO SITE CLEANUP**

60. The Parties mutually release and forego any and all statutory and common law liens that they otherwise may be able to assert now or in the future against the Site or related to the Site or this Agreed Order. IDEM and IFA acknowledge that no source of funding for any Remedial Actions, Removal Actions and/or Response Actions, whether from the Indiana State Revolving Fund, the American Recovery and Reinvestment Act of 2009, or other source will be considered as funds from the United States so as to allow for the assertion of any windfall lien under the provisions of 42 USC 9607(r).

#### **VIII. RELEASE AND COVENANT NOT TO SUE BY IDEM AND IFA**

61. IDEM and IFA hereby fully and forever release and discharge Hartford and Respondents from any and all Claims that IDEM had, has or may in the future have against Hartford and/or Respondents with respect to, relating to, or in any way arising out of the Site or Ertel's operations at the Site. This includes, without limitation, any and all Claims by IDEM for property damage, bodily injury, personal injury, advertising injury, costs of Remedial Actions, Removal Actions and/or Response Actions, costs of any health assessment or health effects study, natural resource damage, economic loss or loss of use. In addition, IDEM hereby withdraws any and all requests or demands made to Ertel and/or Hartford with respect to, relating to or arising out of the Site or Ertel's operations and further surrenders, relinquishes and releases any further right to submit any such Claims whatsoever to Ertel and/or Hartford. IDEM also covenants not to sue or take any administrative or other action (with the sole exception being the execution and issuance of this Order) against Respondents and/or Hartford pursuant to any federal law or regulation, Indiana law or regulation, local or municipal law, ordinance,

regulation, common law or any other law with respect to, relating to, or arising out of the Site or Ertel's operations including, but not limited to, recovery for any past, present or future Remedial Actions, Removal Actions and/or Response Actions or costs incurred in connection with, relating to, or arising out of the Site or Ertel's operations at the Site. IDEM further covenants not to sue or take any action whatsoever against any Person with respect to Contamination at or in connection with the Site. The releases and covenants not to sue are conditioned upon receipt of the payments set forth in Paragraph 53.

#### **IX. RESERVATION OF RIGHTS**

62. IDEM reserves, and this Order is without prejudice to, all rights against Respondents with respect to all matters not expressly included herein. IDEM's authority to sue or be sued is set forth in Title 13 of the Indiana Code and the releases of the City, Hartford and Ertel by IDEM shall be as broad as, but no broader than IDEM is authorized to provide under Indiana law. IDEM and the City have an ongoing and future regulatory role both at the Site and off-Site, and nothing in this Agreed Order shall prohibit IDEM or the City from bringing suit against: (1) any Person, other than a Party, for activities unrelated to Contamination at or in connection with the Site; or (2) any Person, other than a Party, alleged to be liable for pollution that is unrelated to the Site or Ertel's operations.

#### **X. COVENANT NOT TO SUE BY THE ERTEL SIGNATORIES, THE HARTFORD ENTITIES AND THE CITY**

63. In consideration of the releases, covenants not to sue and contribution protection provided by this Agreed Order, and subject to paragraph 65, the Ertel Signatories and the Hartford Entities covenant not to sue and agree not to assert any Claims or causes of action against IDEM and/or the City related to the Response Actions taken or this Agreed Order, including, but not limited to:

- (a) any direct or indirect Claim for reimbursement from the Indiana Hazardous Substances Response Trust Fund based on IC 13-25-4-1(6) and IC 13-25-4-23(b) or the EPA Hazardous Substance Superfund based on CERCLA §§ 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- (b) any Claim arising out of Response Actions at or in connection with the Site, including any Claim under the United States Constitution, the Indiana Constitution, IC 34-13-1-1, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- (c) any Claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Site, or any Claim pursuant to Title 13 of the Indiana Code, relating to the Site.

64. In consideration of the releases, covenants not to sue and contribution protection provided by this Agreed Order, and subject to paragraph 65, the City covenants not to sue and not to assert any Claims or causes of action against IDEM related to the Response Actions taken,

the Site, the Settlement and Release Agreement, or this Agreed Order, including, but not limited to:

- (a) any direct or indirect Claim for reimbursement from the Indiana Hazardous Substances Response Trust Fund based on IC 13-25-4-1(6) and IC 13-25-4-23(b) or the EPA Hazardous Substance Superfund based on CERCLA §§ 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- (b) any Claim against IDEM arising out of Response Actions at or in connection with the Site, including any Claim under the United States Constitution, the Indiana Constitution, IC 34-13-1-1, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- (c) any Claim against IDEM pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Site, or any Claim pursuant to Title 13 of the Indiana Code, relating to the Site.

65. Notwithstanding the covenants not to sue contained in paragraph 63 and 64, above or any other provision of this Agreed Order, nothing in this Agreed Order shall prohibit any Party from suing another Party in an action commenced to enforce the terms of this Agreed Order or the separate Settlement And Release Agreement entered into between IDEM, the City, the Ertel Signatories and the Hartford Entities.

66. This Agreed Order does not constitute any decision on preauthorization of funds under IC 13-25-4-1(6) or IC 13-25-4-23(b), CERCLA §§ 106(b), 111, or 112, 42 U.S.C. §§ 9606(b), 9611, or 9612, or 40 C.F.R. 300.700(d).

## **XI. OTHER CLAIMS**

67. Nothing in this Agreed Order shall be construed as an admission or as a waiver of any Claims or defenses in any dispute or action between Respondents, IFA, the Hartford Entities and IDEM or any third party, except that as set forth in Paragraph 6 of this Agreement, Respondents and the Hartford Entities agree that they will not challenge the findings of fact or the conclusions of law set forth in this Agreed Order in any subsequent proceedings commenced by IDEM against Respondents and/or the Hartford Entities to enforce the terms of this Agreed Order.

68. Nothing in this Agreed Order shall be construed as prohibiting, altering, or in any way limiting the ability of IDEM to seek any other remedies or sanctions available by virtue of any Respondent's violation of this Agreed Order. Nothing in this Agreed Order shall prevent any Party from enforcing its interests in this Agreed Order.

69. Nothing in this Agreed Order shall prevent IDEM or the City from communicating any non-privileged or non-confidential information about the Site or any Response Actions taken pursuant to this Agreed Order to the U.S. EPA or any other agency or entity. IDEM, or anyone acting on its behalf, shall not be liable for any costs or penalties

Respondents may incur as a result of any such communication with U.S. EPA or any other agency or entity.

70. This Agreed Order neither constitutes a finding as to the risks or lack thereof to human health and the environment that may be posed by Contamination at or in connection with the Site nor constitutes any representation that the Site is fit for any particular purpose.

## **XII. CONTRIBUTION PROTECTION**

71. Each of Respondents and Hartford are entitled to and are hereby granted protection from any and all contribution actions or Claims by any Person, including without limitation any Person that is not a Party to this Agreed Order, as provided by IC 13-25-4-27(b) and CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2), for "matters addressed" in this Agreed Order. The "matters addressed" in this Agreed Order include, but are not limited to: all past, present and future contamination, pollution and/or property damage with respect to, relating to, or in any way arising out of the Site or Ertel's operations, whether in soil, soil vapor, groundwater, natural resources, air or elsewhere in the environment; all Response Actions performed or to be performed at or in connection with the Site by any Person, including, without limitation, the City, IDEM or any Person not a Party to this Agreed Order; and all payment of response costs incurred at or in connection with the Site by or to any Person, including, without limitation, the City, IDEM or any Person that is not a Party to this Agreed Order. Nothing in this Agreed Order precludes Ertel or Hartford from asserting any Claims, causes of action, or demands against any Person not a Party to this Agreed Order for indemnification, contribution, subrogation, or cost recovery. The Parties expressly acknowledge that the payments described in Paragraph 53 are for the implementation and/or completion of an approved Response Action within the meaning of IC 13-25-4-27(b).

## **XIII. RETENTION OF RECORDS**

72. Until six (6) years after the Effective Date of this Order, IDEM and the City shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to Response Actions taken at the Site or the liability of any person under Ind. Code § 13-25-4-8 or Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Site, regardless of any corporate retention policy to the contrary.

## **XIV. NOTICES AND SUBMISSIONS**

73. Whenever under the terms of this Order, notice is required to be given or a document is required to be sent to IDEM, the City, Ertel or the Hartford Entities, it shall be directed to the individuals at the addresses specified below, unless those individuals or successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to IDEM and Respondents, respectively.

As to IDEM:

Ryan Groves, Project Manager	(317) 232-3413
State Cleanup Section	rgroves@idem.in.gov
Mail Code 66-30	
100 N. Senate Ave., Suite 1101	
Indianapolis, IN 46204	

(copy to counsel, which does not constitute notice to IDEM)

Timothy J. Junk, DAG	(317) 232-6247
Ind. Gov. Cent. South, 5 <sup>th</sup> Floor	tim.junk@atg.in.gov
302 W. Washington St.	
Indianapolis, IN 46204	

As to the City of Indianapolis:

Christopher Harrell	(317) 327-5845
200 E Washington Street, 20 <sup>th</sup> Floor	Chris.Harrell@indy.gov
Indianapolis, IN 46204	

(copy to counsel, which does not constitute notice to the City)

Brent W. Huber	(317) 236-5942
Ice Miller LLP	brent.huber@icemiller.com
One American Square, Suite 2900	
Indianapolis, IN 46282	

As to the Ertel Signatories:

Ertel Manufacturing Corp.  
c/o James Ertel, Registered Agent  
8044 Dean Road  
Indianapolis, Indiana 46240

(copy to counsel, which does not constitute notice to Ertel)

David L. Hatchett  
Hatchett & Hauck LLP  
111 Monument Circle, Suite 301  
Indianapolis, Indiana 46204-5124

As to Hartford:

Matthew J. Scott  
Vice President  
Complex Claim Group  
The Hartford  
One Hartford Plaza  
Hartford, CT 06155

(copy to counsel, which does not constitute notice to Hartford)

Wayne S. Karbal  
Karbal, Cohen, Economou, Silk & Dunne, LLC  
150 South Wacker Drive, Suite 1700  
Chicago, IL 60606

**XV. EFFECTIVE DATE**

74. The Effective Date of this Order shall be the date upon which this Agreed Order is fully executed by all Parties. IDEM shall immediately provide Respondents with a copy of the Agreed Order after it has been entered by IDEM

FOR THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT:

TECHNICAL RECOMMENDATION:

By: Bruce Palin  
Bruce Palin, Asst. Comm  
Office of Land Quality

Date: 7/8/11

LEGAL RECOMMENDATION:

By: Timothy J. Junk  
Timothy J. Junk  
Dep. Atty. Gen.

Date: 7/8/2011

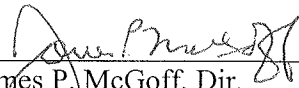
APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, THIS 8<sup>th</sup> DAY OF JULY, 2011.

Thomas W. Easterly  
Thomas W. Easterly  
Commissioner

The Indiana Finance Authority signs this document only to acknowledge its representations, duties and promises as set forth in this Agreement, and that IFA will manage the two Escrow Accounts as per the terms of this Agreed Order.

FOR THE INDIANA FINANCE AUTHORITY:

Date: 7/8/2011

  
James P. McGoff, Dir.  
Environmental Programs

FOR THE CITY OF INDIANAPOLIS

By: \_\_\_\_\_

FOR THE HARTFORD ENTITIES (AS DEFINED)

By: \_\_\_\_\_

By: \_\_\_\_\_

FOR THE ERTEL SIGNATORIES (AS DEFINED)

By: \_\_\_\_\_

FOR THE INDIANA FINANCE AUTHORITY:

Date: \_\_\_\_\_

\_\_\_\_\_  
James P. McGoff, Dir.  
Environmental Programs

FOR THE CITY OF INDIANAPOLIS

By: 

FOR THE HARTFORD ENTITIES (AS DEFINED)

By: \_\_\_\_\_

By: \_\_\_\_\_

FOR THE ERTEL SIGNATORIES (AS DEFINED)

By: \_\_\_\_\_



FOR THE INDIANA FINANCE AUTHORITY:

Date: \_\_\_\_\_

\_\_\_\_\_  
James P. McGoff, Dir.  
Environmental Programs

FOR THE CITY OF INDIANAPOLIS

By: \_\_\_\_\_

FOR THE HARTFORD ENTITIES (AS DEFINED)

By: Gregory Charbonneau

By: \_\_\_\_\_

FOR THE ERTEL SIGNATORIES (AS DEFINED)

By: \_\_\_\_\_

FOR THE INDIANA FINANCE AUTHORITY:

Date: \_\_\_\_\_

\_\_\_\_\_  
James P. McGoff, Dir.  
Environmental Programs

FOR THE CITY OF INDIANAPOLIS

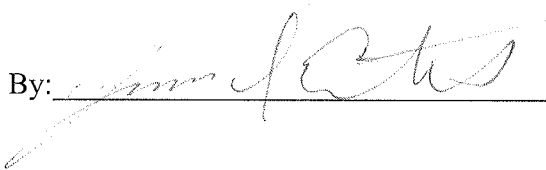
By: \_\_\_\_\_

FOR THE HARTFORD ENTITIES (AS DEFINED)

By: \_\_\_\_\_

By: \_\_\_\_\_

FOR THE ERTEL SIGNATORIES (AS DEFINED)

By:  \_\_\_\_\_